

## CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1798

**Citations Affected:** IC 8-1.5-3-3; IC 8-1.5-5; IC 13-11-2; IC 13-14-9-3; IC 13-17-5-6.7; IC 13-17-5-9; IC 13-18-23; IC 36-9-27-114.

**Synopsis:** Environmental management. Conference committee report for EHB 1798. Allows a third class city to adopt an ordinance providing for the control of any or all of its storm water facilities by the board that controls the municipality's municipally owned utilities. Amends the definition of a board of a department of storm water management. Provides that a board does not have exclusive jurisdiction over the collection and disposal of storm water in the district. Enumerates factors that must be used to establish user fees and allows different fee schedules based on certain factors. Allows a county other than Marion County to establish a department of storm water management under certain circumstances. (Current law provides that the department of public works acts as the department of storm water management in Marion County.) Provides that the drainage board of a county that has not adopted an ordinance to establish a department of storm water management may establish fees for services provided by the board to address issues of storm water quality and quantity. Requires a department to maintain private property if the department uses the property for storm water collection or disposal and obtains the consent of the owner. Makes conforming changes. Provides that a person may not be required to screen a storm water outfall if the pipe diameter of the storm water outfall is less than 24 inches. Establishes a program for the issuance of permits for filling, dredging, or excavating certain wetlands. Prohibits the air pollution control board (board) from adopting rules to require motor vehicle emissions testing in Clark County and Floyd County after December 31, 2006. Allows the budget agency to approve testing if necessary to avoid a loss of federal highway funding. Prohibits a person from being charged a fee for vehicle emission testing. **(This conference committee report: (1) permits only a third class city to adopt an ordinance providing for the control of any or all of its storm water facilities by the board that controls the municipality's municipally owned utilities; (2) deletes the provision that, if a city adopts such an ordinance, the city is not subject to certain procedures prescribed for the sharing of costs of repairing or replacing a combined storm water and sanitary sewer system; (3) requires a department to maintain private property if the department uses the property for storm water collection or disposal and obtains the consent of the owner; (4) makes the county surveyor a voting member of a board of directors of a department in a county and provides that the surveyor's designee may not serve in place of the surveyor; (5) provides that the amount of user fees must be the minimum amount**

necessary for the operation and maintenance of the storm water system; (6) requires the board to use certain factors in establishing user fees; (7) provides that a person may not be required to screen a storm water outfall if the pipe diameter of the storm water outfall is less than 24 inches; (8) establishes a program for the issuance of permits for filling, dredging, or excavating certain wetlands; and (9) adds the provisions concerning motor vehicle emission testing.)

**Effective:** Upon passage; July 1, 2003.

# CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1798 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 environmental management.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 8-1.5-3-3 IS AMENDED TO READ AS FOLLOWS
- 6 [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The legislative body of a
- 7 municipality may, by ordinance, provide for the control of any or all of
- 8 its municipally owned utilities by:
- 9 (1) the municipal works board;
- 10 (2) a board consisting of the members of the municipal legislative
- 11 body;
- 12 (3) a utility service board established under subsection ~~(e)~~ (f) or
- 13 established before January 1, 1983, under IC 8-1-2-100 (repealed);
- 14 or
- 15 (4) the board of directors of a department of waterworks
- 16 established under IC 8-1.5-4.
- 17 **The legislative body of a third class city also may adopt an**
- 18 **ordinance under this subsection to provide for the control of any**
- 19 **or all of its storm water facilities by a board described in**
- 20 **subdivisions (1) through (4). An ordinance granting control of any**
- 21 **or all of a third class city's storm water facilities to a board**
- 22 **described in this subsection may be separate from or combined**

1 with an ordinance granting control of the third class city's  
 2 municipally owned utilities to a board described in this subsection.

3 (b) If, at the time an ordinance is adopted under subsection (a) to  
 4 grant control of any or all of a third class city's storm water  
 5 facilities to a board described in subsection (a) the third class city  
 6 has a department of storm water management under IC 8-1.5-5,  
 7 the ordinance must specify a procedure for the transition of control  
 8 of the affected storm water facilities from the board of directors of  
 9 the department of storm water management to the board described  
 10 in subsection (a).

11 (c) The registered voters of a municipality may file a petition  
 12 addressed to the legislative body requesting that the question of the  
 13 creation of a utility service board be submitted to a referendum. The  
 14 petition must be signed by at least the number of the registered voters  
 15 of the municipality required under IC 3-8-6-3 to place a candidate on  
 16 the ballot.

17 (d) Within thirty (30) days after a petition is filed, the municipal  
 18 clerk shall certify to the legislative body and to the county election  
 19 board that a sufficient petition has been filed.

20 (e) Following certification, the legislative body shall submit the  
 21 question of the creation of a utility service board to a referendum at the  
 22 next election. The question shall be submitted to the registered voters  
 23 of the municipality by placement on the ballot in the form prescribed  
 24 by IC 3-10-9-4 and must state:

25 "Shall the legislative body of the municipality of \_\_\_\_\_  
 26 adopt an ordinance providing for the appointment of a utility service  
 27 board to operate \_\_\_\_\_ (Insert name of utility here)?"

28 (f) If a majority of the voters voting on the question vote for the  
 29 creation of a utility service board, the legislative body shall, by  
 30 ordinance, establish a utility service board consisting of not less than  
 31 three (3) nor more than seven (7) members. Not more than two-thirds  
 32 (2/3) of the members may be of the same political party. All members  
 33 must be residents of the area served by the board. The ordinance must  
 34 provide for:

- 35 (1) a majority of the members to be appointed by the executive and
- 36 a minority of the members to be appointed by the legislative body;
- 37 (2) the terms of the members, which may not exceed four (4) years,
- 38 with initial terms prescribed so that the members' terms will be
- 39 staggered;
- 40 (3) the salaries, if any, to be paid to the members; and
- 41 (4) the selection by the board of a chairman, who shall not be
- 42 considered the head of a department for purposes of IC 36-4-9-2.

43 (g) The registered voters of the municipality may also file a  
 44 petition requesting that the question of the abolition of the utility  
 45 service board be submitted to a referendum. The procedure for filing  
 46 of the petition and the referendum is the same as that prescribed by  
 47 subsections (b) (c) through (d): (e).

48 SECTION 2. IC 8-1.5-5-1 IS AMENDED TO READ AS FOLLOWS  
 49 [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter applies to each:

- 50 (1) municipality; and
- 51 (2) county that:

1           **(A) does not have a consolidated city; and**  
 2           **(B) receives notification from the department of**  
 3           **environmental management that the county will be subject**  
 4           **to storm water regulation under 327 IAC 15-13;**

5 that adopts the provisions of this chapter by ordinance.

6       SECTION 3. IC 8-1.5-5-1.5 IS ADDED TO THE INDIANA CODE  
 7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
 8 UPON PASSAGE]: **Sec. 1.5. The definitions in IC 36-1-2 apply**  
 9 **throughout this chapter.**

10       SECTION 4. IC 8-1.5-5-2 IS AMENDED TO READ AS FOLLOWS  
 11 [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter,  
 12 "board" means the following:

13       (1) For a consolidated city, the board of public works established  
 14 by IC 36-3-5-6.

15       (2) For all other municipalities, the:

16           **(A) board of directors described in section 4 of this chapter; or**  
 17           **(B) board that controls the third class city's municipally**  
 18           **owned utilities under IC 8-1.5-3-3(a) if the city has adopted**  
 19           **an ordinance under IC 8-1.5-3-3(a) that provides for the**  
 20           **control of any or all of the city's storm water facilities by the**  
 21           **board that controls the city's municipally owned utilities.**

22       **(3) For a county:**

23           **(A) the county executive; and**

24           **(B) the county surveyor.**

25       SECTION 5. IC 8-1.5-5-3 IS AMENDED TO READ AS FOLLOWS  
 26 [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter,  
 27 "department" means the following:

28       (1) For a consolidated city, the department of public works.

29       (2) For all other municipalities, the department of storm water  
 30 management established under section 4 of this chapter.

31       **(3) For a county, the department of storm water management**  
 32 **established under section 4.5 of this chapter.**

33       SECTION 6. IC 8-1.5-5-4 IS AMENDED TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) This section applies to all  
 35 municipalities except a consolidated city.

36       (b) If the legislative body of a municipality adopts the provisions of  
 37 this chapter by ordinance, a department of storm water management is  
 38 established and is controlled by a board of directors.

39       (c) Except as provided in ~~subsection~~ **subsections (f) and (g)**, the  
 40 board consists of three (3) directors. The executive of the municipality  
 41 shall appoint the directors, not more than two (2) of whom may be of  
 42 the same political party.

43       (d) Except as provided in ~~subsection~~ **subsections (f) and (g)**, the  
 44 legislative body shall prescribe, by ordinance, the terms of the  
 45 directors. However, the legislative body must prescribe the initial terms  
 46 of the directors so that they will be staggered.

47       (e) The executive may remove a director at any time when, in the  
 48 judgment of the executive, it is for the best interest of the department.

49       (f) If a second class city has a department of public sanitation under  
 50 IC 36-9-25, the executive of the city may appoint the members of the  
 51 board of sanitary commissioners as the board of directors of the

department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.

(g) **If a third class city:**

(1) **has a board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a); and**

(2) **has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities;**

**the members of the board that controls the city's municipally owned utilities shall serve as the board of directors of the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any transition procedure specified in the ordinance under IC 8-1.5-3-3(b).**

(h) **A member of the board of directors of the department of storm water management who:**

(1) **is appointed under subsection (f); or**

(2) **is a member of the board under subsection (g) and receives a salary as a member of the board that controls the third class city's municipally owned utilities;**

is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

SECTION 7. IC 8-1.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) This section applies to a county.**

**(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.**

**(c) An ordinance adopted under this section shall provide for the appointment of:**

(1) **the members of the county executive; and**

(2) **the county surveyor;**

**as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive is coextensive with the member's term of office on the county executive. The term of the surveyor or the surveyor's designee as a member of the board is coextensive with the surveyor's term of office.**

**(d) A member of the board of directors is not entitled to a salary or per diem for serving as a member of the board of directors. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.**

SECTION 8. IC 8-1.5-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5. (a) The legislative body**

1 ~~shall, in the~~ ordinance adopting the provisions of this chapter ~~create~~  
2 ~~creates~~ a special taxing district that includes the following:

3 (1) For a consolidated city, all of the territory of the county  
4 containing the consolidated city.

5 (2) For all other municipalities, all territory within the corporate  
6 boundaries of the municipality.

7 **(3) For a county, all the territory in the county that is not**  
8 **located in a municipality.**

9 (b) ~~As to each municipality to which this chapter applies, including~~  
10 ~~a consolidated city,~~ All the territory within the district constitutes a  
11 special taxing district for the purpose of providing for the collection  
12 and disposal of storm water of the district in a manner that protects the  
13 public health and welfare and for the purpose of levying special benefit  
14 taxes for purposes of storm water collection and disposal. All ~~area~~  
15 **territory** in the district and all ~~area~~ **territory** added to the district is  
16 considered to have received a special benefit from the storm water  
17 collection and disposal facilities of the district equal to or greater than  
18 the special taxes imposed on the ~~area by~~ **territory under** this chapter  
19 in order to pay all or part of the costs of such facilities.

20 SECTION 9. IC 8-1.5-5-6 IS AMENDED TO READ AS FOLLOWS  
21 [EFFECTIVE UPON PASSAGE]: Sec. 6. ~~(a)~~ The board has the powers  
22 and duties prescribed by IC 8-1.5-3-4(a). In addition, the board may:

23 (1) hold hearings following public notice;

24 (2) make findings and determinations;

25 (3) install, maintain, and operate a storm water collection and  
26 disposal system;

27 (4) make all necessary or desirable improvements of the grounds  
28 and premises under its control; and

29 (5) issue and sell bonds of the district in the name of the  
30 **municipality unit served by the department** for the acquisition,  
31 construction, alteration, addition, or extension of the storm water  
32 collection and disposal system or for the refunding of any bonds  
33 issued by the board.

34 ~~(b) The board has exclusive jurisdiction over the collection and~~  
35 ~~disposal of storm water within the district.~~

36 SECTION 10. IC 8-1.5-5-7, AS AMENDED BY P.L.176-2002,  
37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 UPON PASSAGE]: Sec. 7. (a) The acquisition, construction,  
39 installation, operation, and maintenance of facilities and land for storm  
40 water systems may be financed through:

41 (1) proceeds of special taxing district bonds of the storm water  
42 district;

43 (2) the assumption of liability incurred to construct the storm water  
44 system being acquired;

45 (3) service rates;

46 (4) revenue bonds; or

47 (5) any other available funds.

48 (b) The board, after **holding a public hearing with notice given**  
49 **under IC 5-3-1 and obtaining the approval by of the legislative fiscal**  
50 **body of the municipality, unit served by the department,** may assess  
51 and collect user fees from all of the property of the storm water district

for the operation and maintenance of the storm water system. **The amount of the user fees must be the minimum amount necessary for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.**

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

**(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:**

- (1) A flat charge for each lot, parcel of property, or building.**
- (2) The amount of impervious surface on the property.**
- (3) The number and size of storm water outlets on the property.**
- (4) The amount, strength, or character of storm water discharged.**
- (5) The existence of improvements on the property that address storm water quality and quantity issues.**
- (6) The degree to which storm water discharged from the property affects water quality in the storm water district.**
- (7) Any other factors the board considers necessary.**

**(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:**

- (1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;**
- (2) variations in the number of users in various locations; and**
- (3) whether the property is used primarily for residential, commercial, or agricultural purposes.**

SECTION 11. IC 8-1.5-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) If the board acquires a storm water system and assumes the liability incurred by the seller to construct the storm water system, the principal and interest on the liability so assumed shall be paid from the bond and interest redemption account in the same manner as bonds of the district would be paid, and the board shall set aside sufficient revenues to comply with the requirements of the instrument creating the liability.

(b) A ~~municipality unit~~ acquiring a storm water system may not assume any liability for the payment of a secured debt or charge other than the obligation to apply the revenues in the manner prescribed in the ordinance.

(c) The board may issue bonds in exchange for, or satisfaction of, the liability assumed in the acquisition of a storm water system. The bonds so issued may not be issued at less than ninety-seven percent (97%) of the par value thereof in exchange for, or satisfaction of, the liability. Notwithstanding section 13(c) of this chapter, bonds issued in exchange for, or satisfaction of, the liability need not be sold in accordance with IC 5-1-11. However, the interest rate on such bonds may not exceed the average yield on municipal revenue bonds of



comparable credit rating and maturity as of the end of the week immediately preceding the issuance of the bonds.

SECTION 12. IC 8-1.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition, construction, repair, and maintenance of the storm water system, the cost of the issuance of the bonds, and the creation of any reserve for the bonds.

(b) Any holder of the bonds may bring a civil action to compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the following:

(1) Making and collecting reasonable and sufficient user fees lawfully established for service rendered by the storm water system.

(2) Segregating the income and revenues of the department.

(3) Applying the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the storm water system on behalf of the **municipality unit served by the department** and the bondholders, with power to:

(A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the **municipality unit served by the department** and its citizens.

SECTION 13. IC 8-1.5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) **This section applies to a municipality.**

(b) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water collection and disposal shall be:

(1) charged against the municipality; and

(2) paid for ~~in monthly installments~~ as the service accrues out of: ~~the:~~

(A) ~~the~~ current revenues of the municipality, collected or in process of collection; ~~and or~~

(B) ~~the~~ tax levy of the municipality made by it to raise money to meet its necessary current expenses.

~~(b)~~ (c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

SECTION 14. IC 8-1.5-5-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS

[EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) This section applies to a county.**

**(b) The reasonable cost and value of any service rendered to the county by the storm water system by furnishing storm water collection and disposal shall be:**

**(1) charged against all the territory in the county, except territory within a municipality; and**

**(2) paid for as the service accrues out of:**

**(A) the current revenues of the county, collected or in process of collection; or**

**(B) the tax levy of the county made by the county to raise money to meet the county's necessary current expenses.**

**(c) The compensation for the service provided to the county shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.**

SECTION 15. IC 8-1.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. All real property, rights-of-way, or other property acquired by purchase or appropriation shall be taken and held in the name of the ~~municipality~~ **unit served by the department.**

SECTION 16. IC 8-1.5-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) To procure money to pay for the required property and the acquisition, erection, and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the ~~municipality~~ **unit served by the department**, special taxing district bonds of the storm water district. The bonds may not exceed the total estimated cost of the work and property to be acquired as provided for in the resolution, including:

**(1) all expenses necessarily incurred for supervision and inspection during the period of construction; and**

**(2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.**

**(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the ~~municipal~~ fiscal officer, who shall then prepare the bonds. The ~~municipal~~ executive shall execute the bonds, and the fiscal officer shall attest the bonds.**

**(c) The board may not issue bonds of the storm water district, payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.**

(d) The bonds are not a corporate obligation or indebtedness of the ~~municipality unit~~ but are an indebtedness of the storm water district. The bonds and interest are payable:

- (1) out of a special benefit tax levied upon all of the property of the storm water district; or
- (2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

SECTION 17. IC 8-1.5-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

- (1) after approval by the ~~legislative fiscal~~ body of the ~~municipality, unit served by the department~~, shall levy a special benefit tax upon all the property of the storm water district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and
- (2) shall certify the tax levied each year to the ~~fiscal officers~~ **officer** of the ~~municipality and of the county in which the storm water district is located~~; **unit served by the department** at the same time ~~the levy of the municipality is and in the same manner as other levies of the unit are~~ certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

- (1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and
- (2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

SECTION 18. IC 8-1.5-5-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the ~~legislative fiscal~~ body of the ~~municipality~~; **unit served by the department**.

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

SECTION 19. IC 8-1.5-5-27 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 27. If the department:**

- (1) **uses private property for storm water collection or disposal; and**
- (2) **obtains the consent of the owner of the private property to maintain the private property;**

1 the department shall maintain the private property.

2 SECTION 20. IC 8-1.5-5-28 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
4 UPON PASSAGE]: **Sec. 28. A person may not be required to screen  
5 a storm water outfall if the pipe diameter of the storm water  
6 outfall is less than twenty-four (24) inches.**

7 SECTION 21. IC 13-11-2-25.8 IS ADDED TO THE INDIANA  
8 CODE AS A NEW SECTION TO READ AS FOLLOWS  
9 [EFFECTIVE UPON PASSAGE]: **Sec. 25.8. For purposes of  
10 IC 13-18:**

11 (1) "Class I wetland" means an isolated wetland described by  
12 one (1) or both of the following:

13 (A) At least fifty percent (50%) of the wetland has been  
14 disturbed or affected by human activity or development by  
15 one (1) or more of the following:

16 (i) Removal or replacement of the natural vegetation.

17 (ii) Disturbance or modification of the natural hydrology.

18 (B) The wetland supports minimal wildlife habitat or  
19 hydrologic function because the wetland:

20 (i) does not provide critical habitat for threatened or  
21 endangered species listed in accordance with the  
22 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

23 (ii) is typified by low species diversity;

24 (iii) contains greater than fifty percent (50%) areal  
25 coverage of non-native invasive species;

26 (iv) does not support significant habitat or wildlife uses; or

27 (v) does not possess significant hydrologic function;

28 (2) "Class II wetland" means:

29 (A) an isolated wetland that is not a Class I or Class III  
30 wetland; or

31 (B) a type of wetland listed in subdivision (3)(B) that would  
32 meet the definition of Class I wetland if the wetland were not  
33 a rare or ecologically important type; and

34 (3) "Class III wetland" means an isolated wetland:

35 (A) that is located in a setting undisturbed or minimally  
36 disturbed by human activity or development; or

37 (B) unless classified as a Class II wetland under subdivision  
38 (2)(B), that is of one (1) of the following rare and ecologically  
39 important types:

40 (i) Acid bog.

41 (ii) Acid seep.

42 (iii) Circumneutral bog.

43 (iv) Circumneutral seep.

44 (v) Cypress swamp.

45 (vi) Dune and swale.

46 (vii) Fen.

47 (viii) Forested fen.

48 (ix) Forested swamp.

49 (x) Marl beach.

50 (xi) Muck flat.

51 (xii) Panne.

- (xiii) Sand flat.
- (xiv) Sedge meadow.
- (xv) Shrub swamp.
- (xvi) Sinkhole pond.
- (xvii) Sinkhole swamp.
- (xviii) Wet floodplain forest.
- (xix) Wet prairie.
- (xx) Wet sand prairie.

SECTION 22. IC 13-11-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 29. "Clean Water Act", for purposes of **this chapter**, IC 13-18-13, **IC 13-18-22, and IC 13-18-23**, refers to:

- (1) 33 U.S.C. 1251 et seq.; and
- (2) regulations adopted under 33 U.S.C. 1251 et seq.

SECTION 23. IC 13-11-2-36.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 36.3. "Compensatory mitigation"**, for purposes of IC 13-18-22, means the:

- (1) restoration; or
- (2) creation;

**of wetlands to offset or compensate for a loss of wetlands resulting from an authorized wetland activity. Wetlands enlargement, enhancement, and preservation may be considered compensatory mitigation on a case-by-case basis, particularly for Class III wetlands.**

SECTION 24. IC 13-11-2-74.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 74.5. (a) "Exempt isolated wetland"**, for purposes of IC 13-18, means an isolated wetland that:

- (1) is a voluntarily created wetland unless:
  - (A) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act;
  - (B) the wetland is reclassified as a state regulated wetland under IC 13-18-22-6(c); or
  - (C) the owner of the wetland declares, by a written instrument:
    - (i) recorded in the office of the recorder of the county or counties in which the wetland is located; and
    - (ii) filed with the department;
- that the wetland is to be considered in all respects to be a state regulated wetland;
- (2) exists as an incidental feature in or on:
  - (A) a residential lawn;
  - (B) a lawn or landscaped area of a commercial or governmental complex;
  - (C) agricultural land;
  - (D) a roadside ditch;
  - (E) an irrigation ditch; or
  - (F) a manmade drainage control structure;

(3) is a fringe wetland associated with a private pond;  
 (4) is, or is associated with, a manmade body of surface water  
 of any size created by:

- (A) excavating;
- (B) diking; or
- (C) excavating and diking;

dry land to collect and retain water for or incidental to  
 agricultural, commercial, industrial, or aesthetic purposes;

(5) subject to subsection (b), is a Class I wetland with a  
 delineation of one-half (1/2) acre or less;

(6) subject to subsection (c), is a Class II wetland with a  
 delineation of one-fourth (1/4) acre or less;

(7) is located on land:

(A) subject to regulation under the United States Department  
 of Agriculture wetland conservation rules, also known as  
 Swampbuster, because of voluntary enrollment in a federal  
 farm program; and

(B) used for agricultural or associated purposes allowed  
 under the rules referred to in clause (A); or

(8) is constructed for reduction or control of pollution.

(b) The total acreage of Class I wetlands on a tract to which the  
 exemption described in subsection (a)(5) may apply is limited to the  
 larger of:

(1) the acreage of the largest individual isolated wetland on the  
 tract that qualifies for the exemption described in subsection

(a)(5); and

(2) fifty percent (50%) of the cumulative acreage of all  
 individual isolated wetlands on the tract that would qualify for  
 the exemption described in subsection (a)(5) but for the  
 limitation of this subsection.

(c) The total acreage of Class II wetlands on a tract to which the  
 exemption described in subsection (a)(6) may apply is limited to the  
 larger of:

(1) the acreage of the largest individual isolated wetland on the  
 tract that qualifies for the exemption described in subsection

(a)(6); and

(2) thirty-three and one-third percent (33 1/3%) of the  
 cumulative acreage of all individual isolated wetlands on the  
 tract that would qualify for the exemption described in  
 subsection (a)(6) but for the limitation of this subsection.

SECTION 25. IC 13-11-2-112.5 IS ADDED TO THE INDIANA  
 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 [EFFECTIVE UPON PASSAGE]: Sec. 112.5. "Isolated wetland", for  
 purposes of IC 13-18, is a wetland that is not subject to regulation  
 under Section 404(a) of the Clean Water Act.

SECTION 26. IC 13-11-2-130.5 IS ADDED TO THE INDIANA  
 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2003]: Sec. 130.5. "Periodic vehicle  
 inspection program", for purposes of IC 13-17-5, means a program  
 requiring a motor vehicle registered in a county to undergo a  
 periodic test of emission characteristics and be repaired and

1 retested if the motor vehicle fails the emissions test. The term  
 2 includes entering into and managing contracts for inspection  
 3 stations.

4 SECTION 27. IC 13-11-2-166.5 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE UPON PASSAGE]: **Sec. 166.5. "Pond", for purposes**  
 7 **of IC 13-18:**

8 (1) means:

9 (A) a natural surface water that is smaller than ten (10) acres  
 10 at the ordinary high water mark, as defined in 33 CFR 328.3;

11 or

12 (B) a manmade body of surface water of any size created by:

13 (i) excavating;

14 (ii) diking; or

15 (iii) excavating and diking;

16 dry land to collect and retain water for or incidental to  
 17 agricultural, commercial, industrial, or aesthetic purposes;  
 18 and

19 (2) includes water in saturated soils associated with the body  
 20 of water.

21 SECTION 28. IC 13-11-2-221.5 IS ADDED TO THE INDIANA  
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 23 [EFFECTIVE UPON PASSAGE]: **Sec. 221.5. "State regulated**  
 24 **wetland", for purposes of IC 13-18, means an isolated wetland**  
 25 **located in Indiana that is not an exempt isolated wetland.**

26 SECTION 29. IC 13-11-2-233.5 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE UPON PASSAGE]: **Sec. 233.5. "Tract", for purposes**  
 29 **of this chapter, means any area of land that is under common**  
 30 **ownership and is contained within a continuous border.**

31 SECTION 30. IC 13-11-2-245.5 IS ADDED TO THE INDIANA  
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 33 [EFFECTIVE UPON PASSAGE]: **Sec. 245.5. "Voluntarily created**  
 34 **wetland", for purposes of this chapter, means an isolated wetland**  
 35 **that:**

36 (1) was restored or created in the absence of a governmental  
 37 order, directive, or regulatory requirement concerning the  
 38 restoration or creation of the wetland; and

39 (2) has not been applied for or used as compensatory  
 40 mitigation or another regulatory purpose that would have the  
 41 effect of subjecting the wetland to regulation as waters by:

42 (A) the department; or

43 (B) another governmental entity.

44 SECTION 31. IC 13-11-2-265, AS AMENDED BY P.L.183-2002,  
 45 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 46 UPON PASSAGE]: **Sec. 265. (a) "Waters", for purposes of water**  
 47 **pollution control laws and environmental management laws, means:**

48 (1) the accumulations of water, surface and underground, natural  
 49 and artificial, public and private; or

50 (2) a part of the accumulations of water;

51 that are wholly or partially within, flow through, or border upon

1 Indiana.

2 (b) The term "waters" does not include:

3 (1) **an exempt isolated wetland;**

4 (2) a private pond; or

5 (3) an off-stream pond, reservoir, **wetland**, or **other** facility built  
6 for reduction or control of pollution or cooling of water before  
7 discharge. ~~unless the discharge from the pond, reservoir, or facility~~  
8 ~~causes or threatens to cause water pollution.~~

9 SECTION 32. IC 13-11-2-265.6 IS ADDED TO THE INDIANA  
10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE UPON PASSAGE]: **Sec. 265.6. "Wetland activity", for**  
12 **purposes of IC 13-18-22, means the discharge of:**

13 (1) dredged; or

14 (2) fill;

15 **material into an isolated wetland.**

16 SECTION 33. IC 13-11-2-265.7 IS ADDED TO THE INDIANA  
17 CODE AS A NEW SECTION TO READ AS FOLLOWS  
18 [EFFECTIVE UPON PASSAGE]: **Sec. 265.7. "Wetlands", for**  
19 **purposes of IC 13-18, means areas that are inundated or saturated**  
20 **by surface or ground water at a frequency and duration sufficient**  
21 **to support, and that under normal circumstances do support, a**  
22 **prevalence of vegetation typically adapted for life in saturated soil**  
23 **conditions. Wetlands generally include:**

24 (1) swamps;

25 (2) marshes;

26 (3) bogs; and

27 (4) similar areas.

28 SECTION 34. IC 13-11-2-265.8 IS ADDED TO THE INDIANA  
29 CODE AS A NEW SECTION TO READ AS FOLLOWS  
30 [EFFECTIVE UPON PASSAGE]: **Sec. 265.8. "Wetlands**  
31 **delineation" or "delineation", for purposes of section 74.5 of this**  
32 **chapter, means a technical assessment:**

33 (1) of whether a wetland exists on an area of land; and

34 (2) if so, of the type and quality of the wetland based on the  
35 presence or absence of wetlands characteristics, as determined  
36 consistently with the Wetlands Delineation Manual, Technical  
37 Report Y-87-1 of the United States Army Corps of Engineers.

38 SECTION 35. IC 13-14-9-3 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) Except as**  
40 **provided in subsection (b), the department shall provide notice in the**  
41 **Indiana Register of the first public comment period required by section**  
42 **2 of this chapter. A notice provided under this section must do the**  
43 **following:**

44 (1) Identify the authority under which the proposed rule is to be  
45 adopted.

46 (2) Describe the subject matter and the basic purpose of the  
47 proposed rule. The description required by this subdivision must  
48 include a listing of all alternatives being considered by the  
49 department at the time of the notice and must set forth the basis for  
50 each alternative.

51 (3) Describe the relevant statutory or regulatory requirements or



restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

**(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.**

SECTION 36. IC 13-17-5-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6.7. (a) A person may not be charged a fee for having a motor vehicle tested under this chapter.**

**(b) This section expires January 1, 2007.**

SECTION 37. IC 13-17-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. (a) After December 31, 2006, the board may not adopt a rule under air pollution control laws that requires motor vehicles to undergo a periodic test of emission characteristics in the following counties:**

**(1) A county having a population of more than seventy thousand (70,000) but less than seventy-one thousand (71,000).**

**(2) A county having a population of more than ninety thousand (90,000) but less than one hundred thousand (100,000).**

**(b) After December 31, 2006, 326 IAC 13-1.1 is void to the extent it applies to a county referred to in subsection (a).**

**(c) Unless the budget agency approves a periodic vehicle inspection program for a county referred to in subsection (a), the board shall amend 326 IAC 13-1.1 so that it does not apply after December 31, 2006, to a county referred to in subsection (a).**

**(d) The budget agency, after review by the budget committee, may approve in writing the implementation of a periodic vehicle inspection program for one (1) or more counties described in subsection (a) only if the budget agency determines that the implementation of a periodic vehicle inspection program in the designated counties is necessary to avoid a loss of federal highway funding for the state or a political subdivision. The approval must specify the counties to which the periodic vehicle inspection program applies and the time during which the periodic vehicle inspection program must be conducted in each designated county. The budget agency, after review by the budget committee, shall withdraw an approval given under this subsection for a periodic vehicle inspection program in a county if the budget agency determines that the suspension of the periodic vehicle inspection program will not adversely affect federal highway funding for the state or a political subdivision.**

SECTION 38. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 22. State Regulated Wetlands**

1       **Sec. 1. (a) Except as provided in subsection (b), a person**  
 2 **proposing a wetland activity in a state regulated wetland must**  
 3 **obtain a permit under this chapter to authorize the wetland**  
 4 **activity.**

5       **(b) A permit is not required for the following wetland activities:**

6       **(1) The discharge of dirt, sand, rock, stone, concrete, or other**  
 7 **inert fill materials in a de minimis amount.**

8       **(2) A wetland activity at a surface coal mine for which the**  
 9 **department of natural resources has approved a plan to:**

10       **(A) minimize, to the extent practical using best technology**  
 11 **currently available, disturbances and adverse effects on fish**  
 12 **and wildlife;**

13       **(B) otherwise effectuate environmental values; and**

14       **(C) enhance those values where practicable.**

15       **(3) Any activity listed under Section 404(f) of the Clean Water**  
 16 **Act, including:**

17       **(A) normal farming, silviculture, and ranching activities,**  
 18 **such as plowing, seeding, cultivating, minor drainage,**  
 19 **harvesting for the production of food, fiber, and forest**  
 20 **products, or upland soil and water conservation practices;**

21       **(B) maintenance, including emergency reconstruction of**  
 22 **recently damaged parts, of currently serviceable structures**  
 23 **such as dikes, dams, levees, groins, riprap, breakwaters,**  
 24 **causeways, and bridge abutments or approaches, and**  
 25 **transportation structures;**

26       **(C) construction or maintenance of farm or stock ponds or**  
 27 **irrigation ditches, or the maintenance of drainage ditches;**

28       **(D) construction of temporary sedimentation basins on a**  
 29 **construction site that does not include placement of fill**  
 30 **material into the navigable waters; and**

31       **(E) construction or maintenance of farm roads or forest**  
 32 **roads, or temporary roads for moving mining equipment,**  
 33 **where the roads are constructed and maintained, in**  
 34 **accordance with best management practices, to assure that:**

35       **(i) flow and circulation patterns and chemical and**  
 36 **biological characteristics of the navigable waters are not**  
 37 **impaired;**

38       **(ii) the reach of the navigable waters is not reduced; and**

39       **(iii) any adverse effect on the aquatic environment will be**  
 40 **otherwise minimized.**

41       **(c) The goal of the permitting program for wetland activities in**  
 42 **state regulated wetlands is to:**

43       **(1) promote a net gain in high quality isolated wetlands; and**

44       **(2) assure that compensatory mitigation will offset the loss of**  
 45 **isolated wetlands allowed by the permitting program.**

46       **Sec. 2. (a) The board may adopt rules under IC 4-22-2 and**  
 47 **IC 13-14 not later than February 1, 2004, to implement the part of**  
 48 **the definition of Class I wetland under IC 13-11-2-25.8(1)(B).**

49       **(b) Before the adoption of rules by the board under subsection**  
 50 **(a), the department shall determine the class of a wetland in a**  
 51 **manner consistent with the definitions of Class I, II, and III**

1 wetlands in IC 13-11-2-25.8.

2 Sec. 3. (a) An individual permit is required to authorize a  
3 wetland activity in a Class III wetland.

4 (b) Except as provided in section 4(a) of this chapter, an  
5 individual permit is required to authorize a wetland activity in a  
6 Class II wetland.

7 (c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not  
8 later than June 1, 2004, to govern the issuance of individual  
9 permits by the department under subsections (a) and (b).

10 Sec. 4. (a) A general permit is authorized for wetland activities  
11 with minimal impact in Class II wetlands, including the activities  
12 analogous to the nationwide permit program (as published in 67  
13 Fed. Reg. 2077-2089 (2002)).

14 (b) A general permit is authorized for wetland activities in Class  
15 I wetlands.

16 (c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not  
17 later than February 1, 2004, to establish and implement the general  
18 permits authorized in subsections (a) and (b).

19 Sec. 5. (a) The rules adopted under section 3 of this chapter:

20 (1) must require that the applicant demonstrate, as a  
21 prerequisite to the issuance of the permit, that wetland  
22 activity:

23 (A) is reasonably necessary or appropriate to achieve a  
24 legitimate use proposed by the applicant on the property on  
25 which the wetland is located; and

26 (B) for a Class III wetland, is without practical alternative  
27 and will be accompanied by taking steps that are practicable  
28 and appropriate to minimize potential adverse impacts of the  
29 discharge on the aquatic ecosystem of the wetland;

30 (2) except as provided in subsection (c), must establish that  
31 compensatory mitigation will be provided as set forth in  
32 section 6 of this chapter to reasonably offset the loss of  
33 wetlands allowed by the permits; and

34 (3) may prescribe additional conditions that are reasonable  
35 and necessary to carry out the purposes of this chapter.

36 (b) The rules adopted under section 4 of this chapter must  
37 require, as a prerequisite to the applicability of the general permit  
38 by rule to a specific wetland activity, that the person proposing the  
39 discharge submit to the department a notice of intent to be covered  
40 by the general permit by rule that:

41 (1) identifies the wetlands to be affected by the wetland  
42 activity; and

43 (2) except as provided in subsection (c), provides a  
44 compensatory mitigation plan as set forth in section 6 of this  
45 chapter to reasonably offset the loss of wetlands allowed by the  
46 general permit.

47 (c) Under subsections (a) and (b), the rules adopted under  
48 sections 3 and 4 of this chapter may provide for exceptions to  
49 compensatory mitigation in specific, limited circumstances.

50 (d) For purposes of subsection (a)(1)(A):

51 (1) a resolution of the executive of the county or municipality

in which the wetland is located; or  
 (2) a permit or other approval from a local government entity having authority over the proposed use of the property on which the wetland is located;  
 that includes a specific finding that the wetland activity is reasonably necessary or appropriate to achieve the intended use of the property is considered conclusive evidence of that fact.

Sec. 6. (a) Except as otherwise specified in subsection (b), compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) The off-site location of compensatory mitigation must be within:

- (1) the same eight (8) digit U.S. Geological Service hydrologic unit code; or
- (2) the same county;

as the isolated wetlands subject to the authorized wetland activity.

(d) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

Sec. 7. (a) The department shall:

- (1) administer the permit programs established by this chapter; and
- (2) review and issue decisions on applications for permits to undertake wetland activities in state regulated wetlands in accordance with the rules issued by the board under this chapter.

(b) Before the adoption of rules by the board under this chapter, the department shall:

- (1) issue individual permits under this chapter consistent with the general purpose of this chapter; and
- (2) for wetland activities in Class I wetlands, issue permits under this subsection:
  - (A) that are simple, streamlined, and uniform;
  - (B) that do not require development of site specific provisions; and

(C) promptly upon submission by the applicant to the department of a notice of registration for a permit.

(c) Not later than June 1, 2003, the department shall make available to the public:

(1) a form for use in applying for a permit under subsection (b)(1); and

(2) a form for use in submitting a notice of registration for a permit to undertake a wetland activity in a Class I wetland under subsection (b)(2).

Sec. 8. (a) The department shall make a decision to issue or deny an individual permit under section 3 or 7(b)(1) of this chapter not later than one hundred twenty (120) days after receipt of the application. If the department fails to make a decision on a permit application by that deadline, a permit is considered to have been issued by the department in accordance with the application.

(b) Except as provided in subsection (d), a general permit under section 4 of this chapter is considered to have been issued to an applicant on the thirty-first day after the department receives a notice of intent of the permit if the department has not previously authorized the wetland activity.

(c) Except as provided in subsection (d), a permit to undertake a wetland activity in a Class I wetland under section 7(b)(2) of this chapter is considered to have been issued to an applicant on the thirty-first day after the department receives a notice of registration submitted under section 7(b)(2) of this chapter if the department has not previously authorized the wetland activity.

(d) The department may deny a registration for a permit under subsection (b) or (c) before the period specified in subsection (b) or (c) expires.

(e) The department must support a denial under subsection (a) or (d) by a written statement of reasons.

Sec. 9. (a) The owner of a Class III wetland may petition the board for designation of the wetland as an outstanding state protected wetland. Upon verification by the board that the wetland is a Class III wetland and that the petitioner is the owner of the wetland, the board shall conduct a proceeding under IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an outstanding state protected wetland.

(b) A rule adopted by the board under subsection (a) must specifically identify each wetland to be designated as an outstanding state protected wetland, including:

(1) the wetland type;

(2) a legal description of the wetland as delineated; and

(3) other information considered necessary by the board.

(c) The owner of a Class III wetland designated as an outstanding state protected wetland under this section shall:

(1) not cause or allow any anthropogenic activities on the property on which the wetland is located that may adversely affect or degrade the wetland, except for activities with minimal and short term effect, such as construction of an observation pathway or installation of an underground

pipeline that are:

(A) authorized by rules adopted by the board; or

(B) approved by the department in the absence of rules under clause (A); and

(2) provide for the long term assurance of the protections described in subdivision (1) through:

(A) a restrictive covenant that is recorded with respect to the property on which the delineated wetland is located; or

(B) a grant of title to or a conservation easement in the property on which the delineated wetland is located to:

(i) the department of natural resources; or

(ii) a nonprofit entity with demonstrated ability in the maintenance and protection of wetlands.

(d) Notwithstanding the designation of a wetland under this section by the board as an outstanding state protected wetland, the owner of a Class III wetland may petition the board for rescission of the designation if the owner can demonstrate important social or economic needs that warrant adverse effects to the wetland. In its review of the petition, the board shall give great weight to a resolution of the legislative body of the municipality or county in which the Class III wetland is located describing important social or economic needs, the accomplishment of which would necessitate adverse effects to the wetland.

**Sec. 10. The department has no authority over the:**

(1) filling;

(2) draining; or

(3) elimination by other means;

before January 1, 2003, of a wetland that would have been an isolated wetland.

**Sec. 11. When land referred to in IC 13-11-2-74.5(a)(7) is no longer subject to United States Department of Agriculture wetland conservation rules:**

(1) isolated wetlands located on the land are subject to this chapter; and

(2) any past wetland activities in the isolated wetlands located on the land become subject to this chapter, unless the wetland activities were in compliance with United States Department of Agriculture wetland conservation rules.

SECTION 39. IC 13-18-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 23. Department Action on Certification Applications**

**Sec. 1. (a) The department shall:**

(1) make a final determination on an application for a certification under Section 401 of the Clean Water Act not later than one hundred twenty (120) days after its receipt of a complete application; and

(2) include in its notice of the final determination to the applicant a statement of reasons for the final determination.

(b) A failure by the department to act within the period specified in subsection (a)(1) constitutes a waiver of the certification.

SECTION 40. IC 36-9-27-114 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 114. (a) This section applies to a county that:**

(1) receives notification from the department of environmental management that the county will be subject to regulation under 327 IAC 15-13; and

(2) has not adopted an ordinance to adopt the provisions of IC 8-1.5-5.

(b) As used in this section, "storm water improvements" means storm sewers, drains, storm water retention or detention structures, dams, or any other improvements used for the collection, treatment, and disposal of storm water.

(c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.

(d) Fees established under this chapter after a public hearing with notice given under IC 5-3-1 are presumed to be just and equitable.

(e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.

(f) The board shall use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the district.

(7) Any other factors the board considers necessary.

(g) The board may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on:

(1) variations in the costs, including capital expenditures, of addressing storm water quality and quantity for various classes of users or for various locations;

(2) variations in the number of users in various locations; and

(3) whether the property is used primarily for residential, commercial, or agricultural purposes.

SECTION 41. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

1 (1) Monitor the implementation of SECTIONS 21 through 25,  
2 27 through 35, 38, and 39 of this act.

3 (2) Review the role of the department of environmental  
4 management with respect to action on requests under Section  
5 401 of the Clean Water Act (33 U.S.C. 1341) for certifications  
6 concerning projects subject to permit requirements under  
7 Section 404 of the Clean Water Act (33 U.S.C. 1344), and  
8 recommend whether statutory direction is appropriate or  
9 necessary in defining that role.

10 (3) Complete its consideration of the options for statutory  
11 definition of "private pond" as used in the definition of  
12 "waters" in IC 13-11-2-265, as amended by this act, and:

13 (A) recommend an option; and

14 (B) include with the recommendation a statement of  
15 rationale for the recommendation.

16 (4) Evaluate the tensions between existing programs for  
17 wetlands protection and for local drainage and recommend  
18 principles and policies for ameliorating those tensions, taking  
19 into consideration the rationale and objectives for both  
20 programs.

21 (5) Submit its final report on the matters described in  
22 subdivisions (1) through (4) before November 1, 2003, to:

23 (A) the governor; and

24 (B) the executive director of the legislative services agency.

25 (b) The environmental quality service council shall:

26 (1) conduct an ongoing evaluation of the implementation of the  
27 permit program for state regulated wetlands under  
28 IC 13-18-22, as added by this act;

29 (2) recommend any adjustments to the program referred to in  
30 subdivision (1) that are considered advisable to improve the  
31 operation and effectiveness of the program, consistent with the  
32 purpose of providing an efficient permitting process and  
33 enhancing the attainment of an overall goal of no net loss of  
34 state regulated wetlands; and

35 (3) submit its final report on the matters described in  
36 subdivisions (1) and (2) before November 1, 2005, to:

37 (A) the governor; and

38 (B) the executive director of the legislative services agency.

39 (c) This SECTION expires January 1, 2006.

40 SECTION 42. An emergency is declared for this act.

(Reference is to EHB 1798 as reprinted April 8, 2003.)



**Conference Committee Report**  
**on**  
**Engrossed House Bill 1798**

**S**igned by:

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Representative Bottorff  
Chairperson

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Senator Gard

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Representative Scholer

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Senator Lewis

**House Conferees**

**Senate Conferees**